

## 1 HOUSE BILL NO. 147

2 INTRODUCED BY R. DALE

3 BY REQUEST OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
6 TO COMPLETE AND PUBLISH A FINAL ENVIRONMENTAL IMPACT STATEMENT ~~WITHIN 1 YEAR OF ITS~~  
7 ~~DETERMINATION THAT AN APPLICATION FOR AN OPERATING PERMIT OR MAJOR PERMIT REVISION~~  
8 ~~IS ACCEPTABLE UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT RATHER~~  
9 ~~THAN WITHIN 1 YEAR OF ITS DETERMINATION THAT THE APPLICATION IS ADMINISTRATIVELY~~  
10 ~~COMPLETE~~ AT LEAST 15 DAYS PRIOR TO THE DATE OF ISSUANCE OF THE WRITTEN FINDINGS ON A  
11 PERMIT APPLICATION; AMENDING SECTION 82-4-231, MCA; AND PROVIDING AN IMMEDIATE  
12 EFFECTIVE DATE."

13

14 WHEREAS, The Montana Strip and Underground Mine Reclamation Act now requires the  
15 Department of Environmental Quality to complete and publish a final environmental impact statement  
16 within 365 days of notifying the applicant that the application for a permit or a major permit amendment  
17 is administratively complete; and

18 WHEREAS, applications that are administratively complete may be revised significantly because  
19 of substantive deficiencies under The Montana Strip and Underground Mine Reclamation Act discovered  
20 by the Department in its subsequent acceptability review of the application; and

21 WHEREAS, the preparation of an environmental impact statement prior to the Department's  
22 acceptability review is inefficient; and

23 ~~WHEREAS, it has proved unrealistic to complete and publish a final impact statement within 1 year~~  
24 ~~of the administrative completeness determination, given the additional time required for the acceptability~~  
25 ~~review and efforts by the applicant to correct any substantive deficiencies in the application as required~~  
26 ~~by The Montana Strip and Underground Mine Reclamation Act.~~

27 WHEREAS, COMPLETION OF THE ENVIRONMENTAL IMPACT STATEMENT 15 DAYS PRIOR TO THE DEPARTMENT'S  
28 WRITTEN FINDINGS WILL ALLOW EFFICIENT PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT AND WILL NOT  
29 DELAY THE DECISION ON THE APPLICATION.

30

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

2

3 **Section 1.** Section 82-4-231, MCA, is amended to read:

4 **"82-4-231. Submission of and action on reclamation plan.** (1) As rapidly, completely, and  
5 effectively as the most modern technology and the most advanced state of the art will allow, each  
6 operator granted a permit under this part shall reclaim and revegetate the land affected by the operation,  
7 except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under  
8 the provisions of this part and rules adopted by the board, an operator shall prepare and carry out a  
9 method of operation, a plan of grading, backfilling, highwall reduction, subsidence stabilization, water  
10 control, and topsoiling, and a reclamation plan for the area of land affected by the operation. In developing  
11 a method of operation and plans of grading, backfilling, highwall reduction, subsidence stabilization, water  
12 control, ~~grading, highwall reduction,~~ topsoiling, and reclamation, all measures ~~shall~~ must be taken to  
13 eliminate damages to landowners and members of the public, their real and personal property, public roads,  
14 streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and  
15 hazards dangerous to life and property.

16 (2) The reclamation plan ~~shall~~ must set forth in detail the manner in which the applicant intends  
17 to comply with ~~this section and 82-4-232 through 82-4-234 and this section, as amended,~~ and the steps  
18 to be taken to comply with applicable air and water quality laws and rules and any applicable health and  
19 safety standards.

20 (3) The application for permit or major revision of a permit, which ~~shall~~ must contain the  
21 reclamation plan, ~~shall~~ must be submitted to the department.

22 (4) The department shall determine whether the application is administratively complete. An  
23 application is administratively complete if it contains information addressing each application requirement  
24 in 82-4-222 and the rules implementing that section and all information necessary to initiate processing  
25 and public review. The department shall notify the applicant in writing of its determination no later than  
26 90 days after submittal of the application. If the department determines that the application is not  
27 administratively complete, it shall specify in the notice those items ~~which~~ that the application must  
28 address. The application ~~shall be~~ is presumed administratively complete as to those requirements not  
29 specified in the notice.

30 (5) If the department determines that an environmental impact statement on the application is

1 required, it shall notify the applicant in writing at the same time it gives the applicant notice pursuant to  
2 subsection (4).

3 (6) After the applicant receives notice that the application is administratively complete, the  
4 applicant shall publish notice of filing of the application once a week for 4 consecutive weeks in a  
5 newspaper of general circulation in the locality of the proposed operation. The department shall notify  
6 various local governmental bodies, planning agencies, sewage and water treatment authorities, and water  
7 companies in the locality in which the proposed mining will take place of the application and provide a  
8 reasonable time for them to submit written comments. Any person having an interest ~~which~~ that is or may  
9 be adversely affected or the officer or head of any federal, state, or local governmental agency or authority  
10 ~~shall have the right to~~ may file written objections to the proposed initial or revised application for permit  
11 or major revision within 30 days of the applicant's published notice. If written objections are filed and an  
12 objector requests an informal conference, the department shall hold an informal conference in the locality  
13 of the proposed operation within 30 days of receipt of the request. The department shall notify the  
14 applicant and all parties to the informal conference of its decision and the reasons ~~therefor~~ for the decision  
15 within 60 days of the informal conference. The department may arrange with the applicant upon request  
16 by any party to the administrative proceeding for access to the proposed mining area for the purpose of  
17 gathering information relevant to the proceeding.

18 (7) The filing of written objections or a request for an informal conference ~~shall~~ may not preclude  
19 the department from proceeding with its review of the application as specified in subsection (8).

20 (8) (a) The department shall review each administratively complete application and determine the  
21 acceptability of the application. During the review, the department may propose modifications to the  
22 application or delete areas from the application in accordance with the requirements of 82-4-227. A  
23 complete application is considered acceptable when the application is in compliance with all of the  
24 applicable requirements of this part and the regulatory program pursuant to this part.

25 (b) If the applicant significantly modifies the application after the application has been determined  
26 administratively complete in accordance with subsection (4), the department shall under this section either  
27 deny the application or conduct a new review, including an administrative completeness determination,  
28 public notice, and objection period.

29 (c) If an environmental impact statement is determined to be necessary prior to making a permit  
30 decision, the department shall complete and publish the final environmental impact statement ~~within 365~~

1 ~~days of the date of notice of the application's acceptability provided pursuant to subsection (5) (8)(d) AT~~  
2 ~~LEAST 15 DAYS PRIOR TO THE DATE OF ISSUANCE OF THE WRITTEN FINDINGS PURSUANT TO SUBSECTION (8)(F).~~

3 (d) Within 120 days after it determines that an application is administratively complete, the  
4 department shall notify the applicant in writing whether the application is or is not acceptable. If the  
5 application is not acceptable, the department shall set forth the reasons why it is not acceptable, and it  
6 may propose modifications, delete areas, or reject the entire application. All items not specified as  
7 unacceptable in the department's notification are presumed to be acceptable. If the applicant revises the  
8 application in response to a notice of unacceptability, the department shall review the revised application  
9 and notify the applicant in writing within 120 days of the date of receipt whether the revised application  
10 is acceptable. If the revision constitutes a significant modification under subsection (8)(b), the department  
11 shall conduct a new review, beginning with an administrative completeness determination.

12 (e) When the application is determined to be acceptable, the department shall publish notice of  
13 its determination once a week for 2 consecutive weeks in a newspaper of general circulation in the locality  
14 of the proposed operation. Any person having an interest that is or may be adversely affected may file a  
15 written objection to the determination within 10 days of the department's last published notice. If a written  
16 objection is filed and an objector requests an informal conference, the department shall hold an informal  
17 conference in the locality of the proposed operation within 20 days of receipt of the request. The  
18 department shall notify the applicant and all parties to the informal conference of its decision and the  
19 reasons ~~therefor~~ for the decision within 10 days of the informal conference.

20 (f) The department shall prepare written findings granting or denying the permit or major revision  
21 application in whole or in part no later than 45 days from the date the application is determined acceptable  
22 ~~or from the publication of the final environmental impact statement, whichever occurs later.~~ However, if  
23 lands subject to the federal lands program are included in the application for permit or major revision, the  
24 department shall prepare and submit written findings to the federal regulatory authority. If the  
25 department's decision is to grant the permit, the department shall issue the permit on the date of its  
26 written finding or, if any federal concurrence is necessary, on the date when ~~such~~ the concurrence is  
27 obtained. If the application is denied, specific reasons for the denial must be set forth in the written  
28 notification to the applicant.

29 (g) If the department fails to act within the times specified in this subsection (8), it shall  
30 immediately notify the board in writing of its failure to comply and the reasons for the failure to comply.

(9) The applicant, a landowner, or any person with an interest that is or may be adversely affected by the department's permit decision may within 30 days of that decision submit a written notice requesting a hearing. The notice must contain the grounds upon which the requester contends that the decision is in error. The hearing ~~shall~~ must be held within 30 days of the request. For purposes of a hearing, the department may order site inspections of the area pertinent to the application. The department shall within 20 days of the hearing notify the person who requested the hearing, by certified mail, and all other persons, by regular mail, of the findings and decisions. ~~No~~ A person who presided at the informal conference may not ~~either~~ preside at the hearing or participate in the decision ~~thereon~~.

(10) In addition to the method of operation, grading, backfilling, highwall reduction, subsidence stabilization, water control, ~~highwall reduction~~, topsoiling, and reclamation requirements of this part and rules adopted under this part, the operator, consistent with the directives of subsection (1) ~~of this section~~, shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be ~~acid-producing~~ acid-producing, toxic, undesirable, or creating a hazard;

(b) as directed by rules, seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution and ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the department approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner, with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant ~~must~~ shall show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, ~~or constitute a hazard~~ to domestic livestock or ~~to~~ a viable agricultural operation, or violate any other restrictions the department may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until these wastes can be

1 disposed of according to the provisions of this part;

2 (h) deposit as much stockpiled waste material as possible back into the mine voids upon  
3 abandonment in ~~such a manner as to~~ that will prevent or minimize land subsidence. The remaining waste  
4 material ~~shall~~ must be disposed of as provided by this part and the rules of the board.

5 (i) seal all portals, entryways, drifts, shafts, or other openings between the surface and  
6 underground mine workings when no longer needed;

7 (j) to the extent possible using the best technology currently available, minimize disturbances and  
8 adverse impacts of the operation on fish, wildlife, and related environmental values and achieve  
9 enhancement of ~~such those~~ resources ~~where~~ when practicable;

10 (k) minimize the disturbances to the prevailing hydrologic balance at the mine site and in  
11 associated offsite areas and to the quality and quantity of water in surface water and ground water  
12 systems both during and after strip- or underground-coal-mining operations and during reclamation by:

13 (i) avoiding acid or other toxic mine drainage by ~~such~~ measures ~~as,~~ including but not limited to:

14 (A) preventing or removing water from contact with toxic-producing deposits;

15 (B) treating drainage to reduce toxic content ~~which~~ that adversely affects downstream water upon  
16 being released to water courses;

17 (C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other  
18 toxic drainage from entering ground and surface waters;

19 (ii) (A) conducting strip- or underground-mining operations so as to prevent, to the extent possible  
20 using the best technology currently available, additional contributions of suspended solids to streamflow  
21 or runoff outside the permit area, ~~but in no event shall~~ the contributions may not be in excess of  
22 requirements set by applicable state or federal law;

23 (B) constructing any siltation structures pursuant to subsection (10)(k)(ii)(A) prior to  
24 commencement of strip- or underground-mining operations, ~~such~~ the structures to be certified by a  
25 qualified registered engineer and to be constructed as designed and as approved in the reclamation plan;

26 (iii) cleaning out and removing temporary or large settling ponds or other siltation structures from  
27 drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site  
28 and in a manner approved by the department;

29 (iv) restoring recharge capacity of the mined area to approximate premining conditions;

30 (v) avoiding channel deepening or enlargement in operations ~~requiring~~ that requires the discharge

1 of water from mines;

2 (vi) preserving throughout the mining and reclamation process the essential hydrologic functions  
3 of alluvial valley floors in the arid and semiarid areas of the country; and

4 (vii) ~~such~~ other actions ~~as that~~ the department may prescribe;

5 (l) conduct strip- or underground-mine operations in accordance with the approved coal  
6 conservation plan;

7 (m) stabilize and protect all surface areas, including spoil piles, to effectively control air pollution;

8 (n) seal all auger holes with an impervious and noncombustible material in order to prevent  
9 drainage except where the department determines that the resulting impoundment of water in ~~such~~ auger  
10 holes may create a hazard to the environment or the public health and safety;

11 (o) develop contingency plans to prevent sustained combustion;

12 (p) refrain from construction of roads or other access ways up a streambed or drainage channel  
13 or in ~~such~~ proximity to ~~such the~~ channel so as to seriously alter the normal flow of water;

14 (q) meet ~~such~~ other criteria ~~as that~~ are necessary to achieve reclamation in accordance with the  
15 purposes of this part, taking into consideration the physical, climatological, and other characteristics of  
16 the site;

17 (r) with regard to underground mines, eliminate fire hazards and otherwise eliminate conditions  
18 ~~which that~~ constitute a hazard to health and safety of the public;

19 (s) locate openings for all new drift mines working acid-producing or iron-producing coal seams  
20 in ~~such~~ a manner ~~as to prevent that prevents~~ a gravity discharge of water from the mine.

21 (11) An operator may not throw, dump, pile, or permit the throwing, dumping, or piling, ~~or~~  
22 ~~throwing~~ or otherwise placing of any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees,  
23 wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of  
24 land ~~which that~~ is under permit and for which a bond has been posted under 82-4-223, ~~as amended~~, or  
25 place the materials described in this section in ~~such~~ a way that normal erosion or slides brought about by  
26 natural physical causes will permit the materials to go beyond or outside of that area of land. An operator  
27 shall conduct the strip- or underground-mining operation in ~~such~~ a manner ~~as to protect that protects~~ areas  
28 outside the permit area."

29

30 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

31 - END -